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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,151	09/21/1999	ADNAN SHENNIB	ISM/007	3077

7590 11/28/2003

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SCOTTSDALE, AZ 852672995

EXAMINER
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LAO, LUN S

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/400,151

Applicant(s)

SHENNIB, ADNAN

Examiner

Lun-See Lao

Art Unit

2643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED supplemental FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-109

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
DUC NGUYEN  
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: ATTACHMENT

In the response filed 10/8/2003, applicant argued that the finality of the second action was improper (see Remarks, page 15, line 1 - page 16, line 12). The examiner respectfully disagrees for the following reasons.

a. The rejection of claim 37, which is the parent claim of claims 49, 51 and 52, relied on Shennib (US PAT. 5,197,332) to meet elements a), b) and c) in the first Office action (mailed 10/11/2002), and relied on Shennib to meet the existing elements a), b) and c) and on Lotito to meet the newly added element d) in the second Office action (mailed 7/8/2003), as shown in the following:

First Office action mailed 10/11/2002:

5. Claims 37-39, 41-43, 48, 50, 53-65, 68, are rejected under 35 U.S.C. 102(b) as being anticipated by Shennib (US PAT. 5,197,332).

Regarding claim 37, Shennib teaches that a hand held device for performing sound field hearing evaluation in a contactless manner with respect to a test ear of a test subject, said device comprising:

a) an audio transducer (see fig.2, 14) for delivering acoustic test stimuli to said test subject holding said device (18a) within the direct sound field range of said audio transducer (14),

b) means for selecting delivery of said acoustic test stimuli through said audio transducer at two or more intensity levels for performing one or more supra-threshold (see fig.4, 114) hearing measurements (see col.9 line 40-co1.10 line 55), and

c) means for selecting delivery of said acoustic test stimuli through said audio transducer in at least two frequency ranges for performing hearing evaluation in at least two frequency ranges (see col.10 line 55-col.11 line 20).

...

Second Office action mailed 7/8/2003:

6. Claims 37-39, 41-43, 48, 50, 53-65 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shennib (US PAT. 5,197,332) in view of Lotito (US PAT. 6,304,179).

Regarding claim 37, Shennib teaches a hand held device for performing sound field hearing evaluation in a contactless manner with respect to a test ear of a test subject, said device comprising:

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b) means for selecting delivery of said acoustic test stimuli through said audio transducer at two or more intensity levels for performing one or more supra-threshold (see fig.4, 114) hearing measurements (see col.9 line 40-co1.10 line 55), and

c) means for selecting delivery of said acoustic test stimuli through said audio transducer in at least two frequency ranges for performing hearing evaluation in at least two frequency ranges (see col.10 line 55-col.11 line 20).

Shennib fails to teach a position sensor for automatically measuring the position of said device relative to the head or portion of the head of interest of the test subject.

However, Lotito teaches a position sensor for automatically measuring the position of said device relative to the head or portion of the head of interest of the test subject (see col.2 line 10-41).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Shennib and Lotito so as to ensure the quality of data collected (Lotito, col. 6, lines 47-49).

...

Clearly, the new grounds of rejection of claim 37 and the dependent claims 49, 51 and 52 were necessitated by applicant's amendment filed 4/12/2003 which added element d, among others.

b. In response to applicant's request, filed 4/12/2003, to clarify whether the patent number of the Shennib reference cited in brackets was '332 or '104, the second office action confirmed the '332, as evident from the following:

18. Claims 49, 51, 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Shennib (US PAT. 5,197,332) as modified by Lotito (US PAT. 6,304,179) as applied to claim 37 above, and further in view of Anderson (US PAT. 5,721,783).

19. Claim 52 is rejected under 35 U.S.C. ~103(a) as being unpatentable over Shennib (US PAT. 5,197,332) as modified by Lotito (US PAT. 6,304,179) as applied to claim 37 above, and further in view of King (US PAT. 4,615,007) and Anderson (US PAT. 5,721,783).

Therefore, in the second office action, the examiner properly responded to applicant's clarification request.

c. While the Shennib reference was used to meet the limitations of the parent claims (claims 37 and 48), it was the references to Anderson (US PAT. 5,721,783) and to King (US PAT. 4,615,007) that were relied on to meet the specific limitations of claims 49, 51 and 52, as evident from the following sections of the office actions:

First Office action mailed 10/11/2002:

19. Claims 49,51, 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheenib (US PAT. 5,303,306) in view of Anderson (US PAT. 5,721,783).

Regarding claim 49, Sheenib fail to teaches that the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system.

However, Anderson teaches that the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system (see fig.2 (27,24) and col.6 line 47-col.7 line 20).

Therefore, it would have obvious to one of ordinary skill in the art the time the invention was made to utilize the teachings of Anderson in order to provide the hearing aid with wireless remote control for more convenient in testing.

Regarding claim 51, Anderson teaches that the hand-held device of conntactless position sensor (see fig.2, (27,24) system comprises means for automatically determining if the device is within an operable distance and orientation with respect to said head or part thereof of interest of said test subject (see col.21 line 30- col.22 line 18).

20. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheenib (US PAT. 5,303,306) in view of King (US PAT 4,615,007) and Anderson (US PAT. 5,721,783).

Regarding claim 52, Sheenib fail to teach that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part thereof of interest of said test subject based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, King teaches that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part (see col.21 line 30-col.22 line 18).

Therefore, it would have obvious to one of ordinary skill in the art the time the invention was made, to combine the teachings of Sheenib and King to achieve hearing aid with wireless remote control for more accurate in the system.

Sheenib in view of King do not teach that head or part of interest of said test subject based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, Anderson teaches that that head or part of interest of said test subject based on the latency period between a transmitted signal (see fig.1, 17) emitted by an ultrasonic transmitting transducer (16) and reflected signal (see fig.1, 17) received by an ultrasonic receiving transducer (16) (see col.3 line 50-co1.4 line 15).

Therefore, it would have obvious to one of ordinary skill in the art the time the invention was made to utilize the teachings of Anderson in order to provide the hearing aid with wireless remote control for more convenient in the system.

Second Office action mailed 7/8/2003:

18. Claims 49,51, 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Shennib (US PAT. 5,197,332) as modifie by Lotito (US PAT. 6,304,179) as applied to claim 37 above, and further in view of Anderson (US PAT. 5,721,783).

Regarding claim 49, Shennib fail to teaches the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system.

However, Anderson teaches the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system (see fig.2 (27,24) and col.6 line 47-col.7 line 20).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachin of Anderson in order to provide the hearing aid with wireless remote control for more convenient in testing.

Regarding claim 51, Anderson teaches the hand-held device of conntactless position sensor (see fig.2, (27,24) system comprises means for automatically determining if the device is within an operable distance and orientation with respect to said head or part thereof of interest of said test subject (see col.21 line 30- col.22 line 18).

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Regarding claim 52, Shennib fail to teach that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part thereof of interest of said test subject based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, King teaches that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part (see col.21 line 30-col.22 line 18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to combine the teachings of Shennib and King to achieve hearing aid with wireless remote control for more accurate in the system.

Shennib in view of Lotito and King does not teach that the computation is based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, Anderson teaches computation based on the latency period between a transmitted signal (see fig.1, 17) emitted by an ultrasonic transmitting transducer (16) and reflected signal (see fig. 1, 17) received by an ultrasonic receiving transducer (16) (see col.3 line 50-col.4 line 15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of Anderson in order to provide the hearing aid with wireless remote control for more convenient in the system.

Clearly, in the rejections of claims 49, 51 and 52, the examiner relied on the King and the Anderson references consistently in the first and the second office actions. It is the teachings of King and Anderson relied on to meet the specific limitations of claims 49, 51 and 52, rather than that of Shennib relied on to meet the limitations of the parent claims, that is the point of discussion/rebuttle with respect to claims 49, 51 and 52.

In the remarks filed 4/12/2003 (pages 19-20) responding to the first office action, applicant did not provide any specific analysis as to why the portions of Anderson and King relied on in the first office action do not support the examiner's position. Applicant simply recited in substance the respective abstracts/summaries of Anderson and King. See response filed 4/12/2003, page 19, lines 19-23 and page 20, lines 18-26. Such arguments are not sufficient to overcome the prior art relied on.

For these reasons above, applicant's arguments regarding the finality of the second office action are not persuasive.

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a. The rejection of claim 37, which is the parent claim of claims 49, 51 and 52, relied on Shennib (US PAT. 5,197,332) to meet elements a), b) and c) in the first Office action (mailed 10/11/2002), and relied on Shennib to meet the existing elements a), b) and c) and on Litito to meet the newly added element d) in the second Office action (mailed 7/8/2003), as shown in the following:

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5. Claims 37-39, 41-43, 48, 50, 53-65, 68, are rejected under 35 U.S.C. 102(b) as being anticipated by Shennib (US PAT. 5,197,332).

Regarding claim 37, **Shennib teaches** that a hand held device for performing sound field hearing evaluation in a contactless manner with respect to a test ear of a test subject, said device comprising:

a) an audio transducer (see fig.2, 14) for delivering acoustic test stimuli to said test subject holding said device (18a) within the direct sound field range of said audio transducer (14),

b) means for selecting delivery of said acoustic test stimuli through said audio transducer at two or more intensity levels for performing one or more supra-threshold (see fig.4, 114) hearing measurements (see col.9 line 40-col.10 line 55), and

c) means for selecting delivery of said acoustic test stimuli through said audio transducer in at least two frequency ranges for performing hearing evaluation in at least two frequency ranges (see col.10 line 55-col.11 line 20).

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Second Office action mailed 7/8/2003:

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Shennib fails to teach a position sensor for automatically measuring the position of said device relative to the head or portion of the head of interest of the test subject.

However, **Lotito teaches a position sensor for automatically measuring the position of said device relative to the head or portion of the head of interest of the test subject (see col.2 line 10-41).**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Shennib and Lotito so as to ensure the quality of data collected (Lotito, col. 6, lines 47-49).

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Clearly, the new grounds of rejection of claim 37 and the dependent claims 49, 51 and 52 were necessitated by applicant's amendment filed 4/12/2003 which added element d, among others.

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19. Claims 49,51, 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheenib (US PAT. 5,303,306) in view of **Anderson** (US PAT. 5,721,783).

Regarding claim **49**, Sheenib fail to teaches that the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system.

However, **Anderson teaches that the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system (see fig.2 (27,24) and col.6 line 47-col.7 line 20).**

Therefore, it would have obvious to one of ordinary skill in the art the time the invention was made to utilize the teachings of Anderson in order to provide the hearing aid with wireless remote control for more convenient in testing.

Regarding claim **51**, **Anderson teaches that the hand-held device of conntactless position sensor (see fig.2, (27,24) system comprises means for automatically determining if the device is within an operable distance and orientation with respect to said head or part thereof of interest of said test subject (see col.21 line 30- col.22 line 18).**

20. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheenib (US PAT. 5,303,306) in view of **King** (US PAT. 4,615,007) and **Anderson** (US PAT. 5,721,783).

Regarding claim **52**, Sheenib fail to teach that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part thereof of interest of said test subject based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, **King teaches that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part (see col.21 line 30-col.22 line 18).**

Therefore, it would have obvious to one of ordinary skill in the art the time the invention was made, to combine the teachings of Sheenib and King to achieve hearing aid with wireless remote control for more accurate in the system.

Sheenib in view of King do not teach that head or part of interest of said test subject based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, **Anderson teaches that that head or part of interest of said test subject based on the latency period between a transmitted signal (see fig.1, 17) emitted by an ultrasonic transmitting transducer (16) and reflected signal (see fig.1, 17) received by an ultrasonic receiving transducer (16) (see col.3 line 50-co1.4 line 15).**



Therefore, it would have obvious to one of ordinary skill in the art the time the invention was made to utilize the teachings of Anderson in order to provide the hearing aid with wireless remote control for more convenient in the system.

Second Office action mailed 7/8/2003:

18. Claims 49, 51, 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Shennib (US PAT. 5,197,332) as modified by Lotito (US PAT. 6,304,179) as applied to claim 37 above, and further in view of **Anderson** (US PAT. 5,721,783).

Regarding claim 49, Shennib fail to teaches the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system.

However, **Anderson teaches the hand held device of further including means for automatically adjusting the characteristics of said acoustic test stimuli, including onset, amplitude and frequency, in response to position measurements performed by said contactless position sensor system (see fig.2 (27,24) and col.6 line 47-col.7 line 20).**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of Anderson in order to provide the hearing aid with wireless remote control for more convenient in testing.

Regarding claim 51, **Anderson teaches the hand-held device of conntactless position sensor (see fig.2, (27,24) system comprises means for automatically determining if the device is within an operable distance and orientation with respect to said head or part thereof of interest of said test subject (see col.21 line 30- col.22 line 18).**

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Regarding claim 52, Shennib fail to teach that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part thereof of interest of said test subject based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, **King teaches that the hand held device of contactless position sensor system comprises means for computing the distance between the device and said head or part (see col.21 line 30-col.22 line 18).**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to combine the teachings of Shennib and King to achieve hearing aid with wireless remote control for more accurate in the system.

Shennib in view of Lotito and King does not teach that the computation is based on the latency period between a transmitted signal emitted by an ultrasonic transmitting transducer and reflected signal received by an ultrasonic receiving transducer.

However, **Anderson teaches computation based on the latency period between a transmitted signal (see fig.1, 17) emitted by an ultrasonic transmitting transducer (16) and reflected signal (see fig. 1, 17) received by an ultrasonic receiving transducer (16) (see col.3 line 50-col.4 line 15).**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of Anderson in order to provide the hearing aid with wireless remote control for more convenient in the system.

...

Clearly, in the rejections of claims 49, 51 and 52, the examiner relied on the King and the Anderson references consistently in the first and the second office actions. It is the teachings of King and Anderson relied on to meet the specific limitations of claims 49, 51 and 52, rather than that of Shennib relied on to meet the limitations of the parent claims, that is the point of discussion/rebuttle with respect to claims 49, 51 and 52.

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